



**Shreeji Enterprises (K) Limited v D.S Roopra t/a Motorways Constructions (Civil Case 781 of 2003) [2025] KEHC 14802 (KLR) (Commercial and Tax) (16 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14802 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL CASE 781 OF 2003  
F GIKONYO, J  
OCTOBER 16, 2025**

**BETWEEN**

**SHREEJI ENTERPRISES (K) LIMITED ..... PLAINTIFF**

**AND**

**D.S ROOPRA T/A MOTORWAYS CONSTRUCTIONS ..... DEFENDANT**

**RULING**

1. Before me for determination is the defendant/ applicant's notice of motion dated 4th October 2025, expressed to be brought under Order 42 Rule 6 of the Civil Procedure Rules, seeking stay of execution of the judgment/ decree dated 14th April 2023 pending an appeal before the Court of Appeal.
2. The application is premised on the grounds set out in its body, the applicant's affidavits of 4<sup>th</sup> October 2024 and 5<sup>th</sup> June 2025.
3. On 23<sup>rd</sup> September 2024, the applicant filed Civil Application Number E477 of 2024 before the Court of Appeal seeking extension of time to file the Notice of Appeal and application for proceedings.
4. Through a ruling dated 11<sup>th</sup> April 2025, Gatembu, J. A. dismissed that application.
5. The applicant filed a reference against that ruling before a three-judge bench. It is pending determination.
6. The applicant also filed Civil Appeal No. E974 of 2024 on 13<sup>th</sup> December 2024, which is also pending.
7. The applicant submitted that it has met the conditions for a grant of stay of execution of the judgment pending its appeal. He relied on: -
  1. Butt v Rent Restriction Tribunal [1979] KECA 22 (KLR)



2. Tropical Commodities Suppliers Ltd & Others v International Credit Bank Ltd (in liquidation) [2004] EA 331
3. James Wangalwa & anor vs Agnes Naliaka Chesoto [2012] eKLR
4. National Industrial Credit Bank Ltd vs Aquinas Francis Wasike & anor [2006] eKLR
5. Gianfranco Manethi & anor v Africa Merchant Assurance Co. Ltd [2019] eKLR

### **Response**

8. In opposition to the application, the plaintiff filed a replying affidavit and a further replying affidavit sworn by its director, Dhaval Singh on 25<sup>th</sup> October 2025 and 30<sup>th</sup> May 2025 respectively. It also filed written submissions dated 29<sup>th</sup> September 2025.
9. The plaintiff submitted that following the dismissal of the defendant's application for leave to appeal by the ruling of 11<sup>th</sup> April 2025, there is neither a Notice of Appeal properly in court nor an appeal properly filed to warrant the support of a stay order from this court.
10. The plaintiff asserted that maintaining stay order pending the reference would be speculative and prejudicial to it.
11. The plaintiff further asserted that the principle of litigation must come to an end should apply to this case.
12. Therefore, the plaintiff urged the court to vacate the orders of stay granted by the court as the court of appeal has determined the issue.

### **Analysis and Determination**

13. The issue before the court is whether the applicant has made a case for the grant of a stay of execution pending an appeal.
14. The court's has discretion to grant a stay pending an appeal. There are three conditions which are provided under Order 42 Rule 6 of the Civil Procedure Rules, namely, the establishment of sufficient cause, substantial loss if the stay is not granted and security for the performance of the decree. Further, that the application must be made without unreasonable delay.
15. The guiding principles have been discussed by the courts. The key consideration is whether the circumstances of the case warrant a stay so as not to prevent the appeal. *Butt v Rent Restriction Tribunal* [1979] KECA 22 (KLR)
16. Additionally, in exercising its discretion, the court ought to balance the right of the applicant to appeal vis a vis the respondent's right to enjoy the fruits of its judgment. *Machira T/A Machira & Co Advocates vs. East African Standard (No 2)* [2002] KLR 6
17. It also ought to exercise its discretion in a way that prevents the appeal, if successful, from being nugatory. *Vishram Ravji Halai v Thornton & Turpin Civil Application No. Nai 15 of 1990* [1990] KLR 365
18. The applicant must demonstrate a sufficient cause to be granted stay of execution pending appeal. The circumstances of this case are peculiar. The applicant filed an application for leave to appeal out of time and lodged an appeal. The Court of Appeal declined to grant the applicant leave to lodge an appeal out of time and dismissed its application. The applicant filed a reference against the decision of the single judge which is pending determination before a three-judge bench of the Court of Appeal.



19. The prevailing ruling of the Court of Appeal declined the applicant leave to file an appeal outside the statutory timelines. Thus, I am not persuaded that the applicant has demonstrated a sufficient cause for the grant of a stay of execution pending appeal.
20. Having found so, I do not find it necessary to go into the other conditions.
21. In my view, the interim orders of stay are spent.

**Disposal**

22. In the upshot, the notice of motion dated 4th October 2025 is dismissed with costs.

**DATED, SIGNED AND DELIVERED THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 16<sup>TH</sup> DAY OF OCTOBER, 2025**

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**F. GIKONYO M**

**JUDGE**

In the presence of:

Ms. Kache for Oonge for Plaintiff

Ms. Mrutu for Suna for defendant

CA Kinyua

